IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 765 of 2003

in

CIVIL APPLICATIONNo 360 of 2003

with

LETTERS PATENT APPEAL Nos.766 to 768 of 2003

For Approval and Signature:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH K VAHANE

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MR YN Oza, Sr. Advocate with MR.VM DHOTRE for Appellants

MR SI NANAVATI, Sr. Advocate for M/s.NANAVATI & NANAVATI for Respondent No. 1-2

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE J.N.BHATT

Date of decision: 27/08/2003

ORAL JUDGEMENT

(Per : HON'BLE THE CHIEF JUSTICE)

Admit. M/s.Nanavati & Nanavati waive service for the respondents. Heard finally since short question arises for determination in these appeals.

2. These appeals (Letters Patent Appeal Nos.765 to 768 of 2003) are directed against the order of the learned single Judge dated 25.2.2003 in Civil Application Nos.356, 358, 359 and 360 of 2003 whereby the prayer of the appellants for payment of monthly wages from November 2002 and thereafter has been rejected. The petitioners claim that they are daily-wagers of the Municipal Corporation of Ahmedabad since 1996. They have put in service of 900 days within five years, therefore, they are entitled to regularization. Whether they are entitled to regularisation or not is a question to be decided by the learned single Judge. These appeals pertain to payment of wages to the daily-wagers from November 2002 till date. Learned single Judge rejected the prayer holding that whether the petitioners have worked or not is a question of fact, therefore, cannot be considered.

3. Shri Yatin Oza, learned counsel appearing for the petitioners submits that there is no dispute as to petitioners being in service, therefore entitled to wages, as such the conclusion of the learned single Judge is not correct. The submission of the other side is that the petitioners may be in the service of the Corporation, but they have not been engaged in any work, therefore, question of payment of wages does not arise. We do not find favour with this submission. It is undeniable that the petitioners are daily wagers of the Corporation (Octroi Department) since 1996. Their claim for regularization is pending before the learned single Judge. There is no dispute between the parties that the petitioners are in the service of the Corporation and their services have not been dispensed with. With regard to entitlement to wages, the statement that they have not been provided work since work is not available cannot be accepted. The stand of the Corporation reflected in order dated 21.12.2001 (para 3) and penultimate para of

the order dated 5.2.2002 demonstrates that work is available in the Corporation and the petitioners have completed 900 days in 5 years in the Octroi Department. The statement is reiterated in the order dated 5.2.2002. The policy of the Corporation is to regularize such workmen and the contention that this policy applies only to the workmen of Engineering Department cannot be accepted. The decision of the Apex Court in Ahmedabad Municipal Corporation v. Virendra Kumar Jayantibhai Patel [(1997) 6 SCC 650] cannot be applied to the facts of this case. A careful reading of the said judgment would show that the question before the Apex Court related to doctors and not daily-wagers. As a matter of fact, the Corporation's policy is to regularize all those daily-wagers who have served for 900 days in 5 years. Octroi Department and Engineering Department are of the Municipal Corporation, therefore, policy for regularisation should be applicable equally to all the wings of the Corporation.

4. Shri Nanavati submitted that no work has been assigned to the daily-wagers. This submission cannot be accepted. From the statement to the Court on 21.12.2001, it is clear that work is available. If it is not available, why daily-wagers from Engineering Department have been shifted to Octroi Department in which the petitioners are working. Therefore, it is found that the petitioners are working with the Corporation and entitled to payment of wages and the contention that no work is available is liable to be rejected.

5. Accordingly, appeals are allowed. The order of the single Judge dated 25.2.2003 is set aside. The services of the petitioners will not be terminated and they shall be assigned work and paid wages they are entitled to for the past within fifteen days and for the future regularly in the first week of the month. We make it clear that none of the observations and conclusions drawn by us on issues not directly involved for consideration will influence the learned single Judge in the disposal of the case since these appeals are limited to payment of daily-wages to the petitioners.

(Bhawani Singh)
Chief Justice

(J.N.Bhatt)
Judge

(vjn)